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REVIEW OF THE IMPLEMENTATION OF THE DECLARATION ON THE STRENGTHENING OF INTERNATIONAL SECURITY

Letter dated 30 October 1991 from the Permanent Representative of the Netherlands to the United Nations addressed to the Secretary-General

I have the honour to transmit the text, in English and French, of a declaration of the European Community and its member States on Dubrovnik, issued on 27 October 1991 (see annex).

I should be grateful if you would have the text of the present letter and its annex circulated as a document of the General Assembly.

(Signed) Robert J. VAN SCHAIK
Ambassador
Permanent Representative

Annex

DECLARATION OF THE EUROPEAN COMMUNITY AND ITS MEMBER STATES ON DUBROVNIK

The European Community and its member States strongly condemn the continuous JNA attacks on Croat cities. Cease-fire agreements have been violated by all parties, but recent Yugoslav National Army (JNA) attacks are out of all proportion to any non-compliance by Croatia. The repeated attacks on Dubrovnik have given the lie to the assertion that JNA only acts to relieve besieged garrsions or to protect Serbian communities.

JNA has issued an ultimatum whose terms imply the virtual surrender of Dubrovnik. The European Community and its member States consider this an illegal act clearly aimed at the seizure of an indisputably Croatian city.

The European Community and its member States reiterate that they will under no circumstances accept a policy of fait accompli aimed at unilateral change of borders.

In this context, they urge JNA to refrain from promulgating ultimatums and to comply strictly with the orders for a cease-fire issued by the eight members of the Federal Presidency on 18 October 1991.

They call on JNA to end the siege of Dubrovnik and to allow for relief supplies to be brought to the beleaguered population of the city so as to permit the legal administration and normal functioning of the city to be restored.

The European Community and its member States forcefully remind the leadership of JNA and all those exercising control over it of their personal responsibility under international law for their actions, including those in contravention of relevant norms of international humanitarian law. They will further determine their position during their meeting in Brussels on 28 October 1991.

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CONVENTION ON PROHIBITIONS OR RESTRICTIONS ON THE USE OF CERTAIN CONVENTIONAL WEAPONS WHICH MAY BE DEEMED TO BE EXCESSIVELY INJURIOUS OR TO HAVE INDISCRIMINATE EFFECTS

Note verbale dated 4 November 1991 from the Permanent Representative of Sweden to the United Nations addressed to the Secretary-General

The Permanent Representative of Sweden to the United Nations presents his compliments to the Secretary-General of the United Nations and has the honour to request that the attached documents be circulated as a document of the General Assembly under agenda item 64 entitled "Convention on Prohibition or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects".

Annex

A PROTOCOL ON NAVAL MINES WITHIN THE FRAMEWORK OF THE 1980 CONVENTION ON PROHIBITIONS OR RESTRICTIONS ON THE USE OF CERTAIN CONVENTIONAL WEAPONS WHICH MAY BE DEEMED TO BE EXCESSIVELY INJURIOUS OR TO HAVE INDISCRIMINATE EFFECTS a/

Working paper submitted by Sweden

At the 1989 session of the Disarmanent Commission Sweden presented a working paper and a draft Protocol on Prohibitions or Restrictions on the Use of Naval Mines (A/CN.10/129). The Protocol was seen as an updated version of the 1907 Hague Convention Relative to the Laying of Automatic Submarine Contact Mines (Hague Convention VIII).

The Hague Convention contains provisions on neutralizing mechanisms with regard to drifting mines and information regarding danger zones. However, the Convention has in various respects become outdated. It does not, for example, accommodate later developments, such as mines relying on magnetic, acoustic or pressure effects or a combination thereof.

Sweden now presents a new version of the draft Protocol introduced in 1989. Like the earlier version, it is elaborated on the basis of the concepts of neutralizing mechanisms and information, concepts already incorporated in the Hague Convention VIII and Protocol II on Prohibitions or Restrictions on the Use of Mines, Booby-traps and Other Devices, attached to the 1980 Convention on Certain Conventional Weapons. The new version is the product of consultations among a small number of international experts, acting in their personal capacity. The text differs from the earlier one in that the reference to torpedoes is deleted and that the draft Protocol is presented as an additional Protocol attached to the 1980 Convention on Certain Conventional Weapons. Other changes are basically of a drafting nature, even if they are numerous.

It should be noted that Protocol II attached to the 1980 Convention on Certain Conventional Weapons only regulates the use of land-mines. It is therefore, for that reason alone, appropriate to consider an additional protocol on naval mines.

Notes

a/ See The United Nations Disarmament Yearbook, vol. 5: 1980 (United Nations publication, Sales No. E.81.IX.4), appendix VII.

Appendix

DRAFT PROTOCOL ON PROHIBITIONS OR RESTRICTIONS ON THE USE OF NAVAL MINES (TO BE ANNEXED TO THE 1980 CONVENTIONAL WEAPONS CONVENTION)

Article 1. Material scope of application

Cf. art. 1, 1981 Protocol on land-mines

This Protocol relates to the use of naval mines as defined herein, excluding mines covered by Protocol II on Prohibitions or Restrictions on the Use of Mines, Booby-traps and Other Devices.

Article 2. Definition

For the purpose of this Protocol "mine" means an explosive device laid in the water, on the seabed or in the subsoil thereof, with the intention of damaging or sinking ships or deterring shipping from entering a sea area. The term does not include devices attached to the bottom of ships or to harbour installations by personnel operating under water.

Article 3. Basic rule

Cf. art. 3:3, 1981 Protocol on land-mines, art. 51:4, Additional Protocol I of 1977

The indiscriminate use of mines is prohibited. Indiscriminate use is any laying of mines:

(a) Which is not or cannot be directed at a military objective;

(b) Which may be expected to cause incidental loss of civilian life, injury to civilians, or a combination thereof which would be excessive in relation to the concrete and direct military advantage anticipated.

Article 4. Restrictions of the use of mines

General rule (Cf. the 1989 Bochum Round-Table Principles)

1. Ships protected under existing rules of international law, and fulfilling the conditions of their protection, are not to be regarded as military objectives and shall not be the object of attack or of reprisals through the laying of mines. Protected vessels include vessels of neutral or non-belligerent States, passenger vessels, small coastal fishing vessels and small boats engaged in local coastal trade, hospital ships, vessels on humanitarian relief or rescue missions, vessels designated

for and engaged in the exchange of prisoners of war (cartel vessels) and other vessels guaranteed safe conduct by prior agreement between the belligerent parties. In addition, ships engaged in the protection of the marine environment shall be regarded as protected vessels by the Parties to this Protocol.

2. It is prohibited to lay drifting mines unless they are so constructed as to become harmless one hour at most after their being laid. A drifting mine is a mine free to move under the influence of wind and tide.

Cf. NWP 9

3. Mining of internal, territorial or archipelagic waters of neutral or non-belligerent States is prohibited.

Article 5. Neutralizing mechanisms

Construction rule (Cf. Prot. II, 1981, art. 5:1:b)

1. Each mine laid during a conflict shall be fitted with an effective neutralizing mechanism. A neutralizing mechanism is a self-actuating or remotely controlled mechanism which is designed to render a mine harmless or cause it to destroy itself when it is anticipated that the mine will no longer serve the military purpose for which it was placed in position, or at the latest two years after such emplacement.

Anchored mines (Hague Convention VIII, 1907, art. 1:2)

2. Anchored mines shall become harmless as soon as they have broken loose from their moorings.

Article 6. Precautionary measures

Other mines (Prot. II, 1981, art. 3:4)

When mines are employed, all feasible precautions, including notification of danger zones, shall be taken for the safety of vessels referred to in article 4. Feasible precautions are those precautions which are practicable or practically possible taking into account all circumstances ruling at the time, including humanitarian and military considerations.

Article 7. Recording and publication of location of naval mines

Cf. Prot. II, 1981, art. 7

1. The parties to a conflict shall record the position of all minefields laid by them.

2. All such records shall be retained by the parties who shall, with regard to mines which remain potentially harmful:

(a) As soon as possible, by mutual agreement, provide for the release of information concerning the location of such mines, particularly in agreements governing the cessation of hostilities;

(b) Immediately after the formal cessation of hostilities or any other effective conclusion of hostilities, take all necessary and appropriate measures, including the use of such records, to protect civilians from the effects of such mines; and

(c) Make available to each other and to the Secretary-General of the United Nations or such other institutions as the parties may deem appropriate, all information in their possession concerning the locations of such mines.

Article 8. International cooperation

After the formal cessation of hostilities, or any other effective conclusion of hostilities, the parties shall endeavour to reach agreement both among themselves and, where appropriate, with other States and with international organizations, on the provision of information and technical and material assistance - including, in appropriate circumstances, joint operations - necessary to remove or otherwise render ineffective mines placed which continue to be harmful.